

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CORDIS CORPORATION, et al.,)	
)	
Plaintiff,)	
v.)	C. A. No. 97-550 (SLR)
)	
MEDTRONIC VASCULAR, INC., et al.,)	
)	
Defendant.)	
_____)	
)	
MEDTRONIC VASCULAR, INC.,)	
)	
Plaintiff,)	C. A. No. 97-700 (SLR)
v.)	
)	
CORDIS CORPORATION, et al.,)	
)	
Defendant.)	
_____)	

**MEDTRONIC’S MOTION FOR JUDGMENT AS A
MATTER OF LAW ON CORDIS’S PATENT INFRINGEMENT CLAIMS**

Medtronic Vascular, Inc. (“Medtronic”) hereby renews its motion for judgment as a matter of law pursuant to FED. R. CIV. P. 50(b) on the infringement claims of Cordis Corporation (“Cordis”). No reasonable jury could find based on the evidence presented at trial that any of the Medtronic products at issue in this case, the Microstent II, GFX and GFX2 stents (the “Accused Products”), meet the “substantially uniform thickness” limitation of the asserted claims. The grounds for this motion are set forth below and will be set forth in more detail in Medtronic’s opening brief in support of its motion which will be filed on April 19, 2005 in accordance with the April 11, 2005 Stipulation and Order (D.I. 1378 in C.A. 97-550).

The Court instructed the jury that “[a] wall that varies in thickness by as much as 100 percent cannot be said to be of substantially uniform thickness.” Both the ‘762

reexamination file history and the Federal Circuit decision in this case compel the conclusion that, as a matter of law, a stent with a wall that is twice as thick in some areas as it is in another cannot infringe the claims of either of the Cordis patents. Cordis did not dispute or rebut the evidence Medtronic presented that, when measured along their length using the methodology endorsed by the Federal Circuit, the walls of the Accused Stents vary in thickness by much more than 100%. Therefore, the Accused Stents cannot meet the substantially uniform thickness limitation. At trial, Cordis effectively read this limitation out of the claim in its presentation of the evidence and, by urging the jury in closing argument, *inter alia*, to disregard Medtronic's proof that parts of the walls of the Accused Stents were twice as thick as other parts of those walls – proof which followed the methodology endorsed by the Federal Circuit for measuring the wall thickness of a stent – because it was a “mathematical trick” that cannot occur.

Further, the evidence Cordis presented at trial was irrelevant to analyzing the thickness of the wall of the Accused Stents and was misleading because it was inconsistent with the proper methodology endorsed by the Federal Circuit.

There was otherwise no legally sufficient evidentiary basis for a reasonable jury to find for Cordis on the issue of infringement. The jury's factual findings were not supported by substantial evidence; nor can the legal conclusions implied from the jury verdict be supported by those findings.

For those reasons and the reasons to be set forth in Medtronic's opening brief, Medtronic respectfully requests that this Court enter judgment as a matter of law on Cordis's infringement claims in favor of Medtronic.

MORRIS, NICHOLS, ARSHT & TUNNELL

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 14, 2005 I electronically filed the foregoing with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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